

# **EXHIBIT 28**

## **Redacted Excerpts from Deposition of Michael Mersch**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

CUNG LE; NATHAN QUARRY, JON	)	
FITCH, on behalf of	)	
themselves and all others	)	
similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No.
	)	2:15-cv-01045-RFB- (PAL)
	)	
ZUFFA, LLC, d/b/a Ultimate	)	
Fighting Championship and	)	
UFC,	)	
	)	
Defendant.	)	
	)	

C O N F I D E N T I A L

VIDEOTAPED DEPOSITION OF

MICHAEL P. MERSCH

MORNING SESSION (PAGES 1 to 332)

LAS VEGAS, NEVADA

JULY 14, 2017

8:05 a.m.

REPORTED BY:  
CYNTHIA K. DuRIVAGE, CSR #451  
JOB NO. 51253-A

MICHAEL P. MERSCH - CONFIDENTIAL

<div>226</div> <div>[REDACTED]</div> <div>23 Q. And then, the legion of doom would go get</div> <div>24 them from the Zuffa's legal department, correct?</div> <div>25 MR. WILLIAMS: Object to the form of the</div>	<div>228</div> <div>[REDACTED]</div>
<div>227</div> <div>1 question.</div> <div>2 BY MR. CRAMER:</div> <div>[REDACTED]</div>	<div>229</div> <div>[REDACTED]</div>

58 (Pages 226 to 229)

232

233

A. They could put any number of provisions in

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<p style="text-align: right;">234</p> <p>1 an agreement.</p> <p>2 MR. CRAMER: I'd like to have the court</p> <p>3 reporter mark as Mersch Exhibit 14 the next document.</p> <p>4 (Exhibit 14 was marked for</p> <p>5 identification by the reporter.)</p> <p>6 MR. CRAMER: Mersch Exhibit 14 is, it's</p> <p>7 really a one-page document, the second page is blank.</p> <p>8 Bearing the Bates number ZFL-2632951.</p> <p>9 BY MR. CRAMER:</p> <p>10 <b>Q. Let me know when you've had a chance to</b></p> <p>11 <b>review it.</b></p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 (Pause in proceedings.)</p> <p>15 BY MR. CRAMER:</p> <p>16 <b>Q. Just let me know when you're done reading</b></p> <p>17 <b>it.</b></p> <p>18 A. Okay.</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>	<p style="text-align: right;">236</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 <b>Q. And you're aware that many fighters don't</b></p> <p>22 <b>have other forms of income other than from mixed</b></p> <p>23 <b>martial arts fighting, correct?</b></p> <p>24 A. I wouldn't know specifically what forms of</p> <p>25 income any particular fighter has or does not have.</p>
<p style="text-align: right;">235</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 <b>Q. All right. You can put that document</b></p> <p>17 <b>aside.</b></p> <p>18 <b>Would you agree with me that UFC fighters</b></p> <p>19 <b>are independent contractors?</b></p> <p>20 A. I would.</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>	<p style="text-align: right;">237</p> <p>1 I certainly am aware that they derive a</p> <p>2 certain amount of their income from the UFC pursuant</p> <p>3 to their PAR agreements. But whether they choose to</p> <p>4 seek other income outside of the UFC, I wouldn't have</p> <p>5 any specific knowledge, but I know that a lot of them</p> <p>6 just generically do.</p> <p>7 <b>Q. But it's also fair to say that in order to</b></p> <p>8 <b>be a fighter at the level of a UFC fighter in mixed</b></p> <p>9 <b>martial arts, they need to spend a significant amount</b></p> <p>10 <b>of their time in training, correct?</b></p> <p>11 MR. WILLIAMS: Object to the form of the</p> <p>12 question.</p> <p>13 THE WITNESS: I guess the word</p> <p>14 "significant" is ambiguous, and I'm not sure exactly</p> <p>15 how to take it or what you might mean by it. I think</p> <p>16 that could be taken in a lot of different ways.</p> <p>17 I know fighters that train -- each</p> <p>18 individual fighter, I think, trains in their own</p> <p>19 manner and in a manner that I think they feel is in</p> <p>20 their best interests. Some train longer than others.</p> <p>21 Some have longer fight camps than others, some train</p> <p>22 in different disciplines than others.</p> <p>23 Some supplement their training with</p> <p>24 nutritional and other methods. Some don't. So I</p> <p>25 think it just depends on what each individual fighter</p>

60 (Pages 234 to 237)

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<p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>	<p>326</p>	<p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 MR. CRAMER: All right. Let's go off the</p> <p>14 record.</p> <p>15 THE VIDEOGRAPHER: We are off the record,</p> <p>16 4:12 p m.</p> <p>17 (There was a recess taken.)</p> <p>18 (Whereupon, Court Reporter</p> <p>19 Cynthia K. DuRivage was relieved by</p> <p>20 Court Reporter Jualita Stewart, the</p> <p>21 transcript of which is contained in</p> <p>22 a separate booklet.)</p> <p>23</p> <p>24 * * * * *</p> <p>25</p>	<p>328</p>
<p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>	<p>327</p>	<p>1</p> <p>2 STATE OF _____ )</p> <p>3 ) :ss</p> <p>4 COUNTY OF _____ )</p> <p>5</p> <p>6</p> <p>7 I, MICHAEL P. MERSCH, the witness</p> <p>8 herein, having read the foregoing</p> <p>9 testimony of the pages of this deposition,</p> <p>10 do hereby certify it to be a true and</p> <p>11 correct transcript, subject to the</p> <p>12 corrections, if any, shown on the attached</p> <p>13 page.</p> <p>14</p> <p>15 _____</p> <p>16 MICHAEL P. MERSCH</p> <p>17</p> <p>18</p> <p>19</p> <p>20 Sworn and subscribed to before</p> <p>21 me, this day of</p> <p>22 , 2017.</p> <p>23</p> <p>24 _____</p> <p>25 Notary Public</p>	<p>329</p>

83 (Pages 326 to 329)

## MICHAEL P. MERSCH - CONFIDENTIAL

330	332
<p>1 CERTIFICATE OF REPORTER</p> <p>2 I, Cynthia K. DuRivage, a Certified</p> <p>3 Shorthand Reporter of the State of Nevada, do hereby</p> <p>4 certify:</p> <p>5 That the foregoing proceedings were taken</p> <p>6 before me at the time and place herein set forth;</p> <p>7 that any witnesses in the foregoing proceedings,</p> <p>8 prior to testifying, were duly sworn; that a record</p> <p>9 of the proceedings was made by me using machine</p> <p>10 shorthand which was thereafter transcribed under my</p> <p>11 direction; that the foregoing transcript is a true</p> <p>12 record of the testimony given.</p> <p>13 I further certify I am neither financially</p> <p>14 interested in the action nor a relative or employee</p> <p>15 of any attorney or party to this action.</p> <p>16 Reading and signing by the witness was</p> <p>17 requested.</p> <p>18 IN WITNESS WHEREOF, I have this date</p> <p>19 subscribed my name.</p> <p>20 Dated: August 1, 2017</p> <p>21</p> <p>22</p> <p>23 _____</p> <p style="text-align: center;">CYNTHIA K. DuRIVAGE</p> <p style="text-align: center;">CCR No. 451</p> <p>24</p> <p>25</p>	<p>1 E R R A T A</p> <p>2</p> <p>3</p> <p>4</p> <p>5 I wish to make the following changes,</p> <p>6 for the following reasons:</p> <p>7</p> <p>8 PAGE LINE</p> <p>9 ____ CHANGE: _____</p> <p>10 REASON: _____</p> <p>11 ____ CHANGE: _____</p> <p>12 REASON: _____</p> <p>13 ____ CHANGE: _____</p> <p>14 REASON: _____</p> <p>15 ____ CHANGE: _____</p> <p>16 REASON: _____</p> <p>17 ____ CHANGE: _____</p> <p>18 REASON: _____</p> <p>19 ____ CHANGE: _____</p> <p>20 REASON: _____</p> <p>21</p> <p>22 _____</p> <p>23 WITNESS' SIGNATURE      DATE</p> <p>24</p> <p>25</p>
331	
<p>1 INSTRUCTIONS TO WITNESS</p> <p>2</p> <p>3 Please read your deposition over carefully</p> <p>4 and make any necessary corrections. You should state</p> <p>5 the reason in the appropriate space on the errata</p> <p>6 sheet for any corrections that are made.</p> <p>7 After doing so, please sign the errata sheet</p> <p>8 and date it.</p> <p>9 You are signing same subject to the changes</p> <p>10 you have noted on the errata sheet, which will be</p> <p>11 attached to your deposition.</p> <p>12 It is imperative that you return the original</p> <p>13 errata sheet to the deposing attorney within thirty</p> <p>14 (30) days of receipt of the deposition transcript by</p> <p>15 you. If you fail to do so, the deposition transcript</p> <p>16 may be deemed to be accurate and may be used in court.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

CUNG LE; NATHAN QUARRY, JON	)	
FITCH, on behalf of	)	
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	)	
ZUFFA, LLC, d/b/a Ultimate	)	
Fighting Championship and	)	
UFC,	)	
	)	
Defendant.	)	
_____	)	

C O N F I D E N T I A L

VIDEOTAPED DEPOSITION OF

MICHAEL P. MERSCH

AFTERNOON AND EVENING SESSIONS (PAGES 333 to 496)

LAS VEGAS, NEVADA

JULY 14, 2017

4:43 p.m.

Reported by:  
Jualitta Stewart, CCR No. 807, RPR  
Job No. 51253-B



356

A. Okay.

357

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<p>358</p> <p>[REDACTED]</p>	<p>360</p> <p>[REDACTED]</p>
<p>359</p> <p>[REDACTED]</p>	<p>361</p> <p>[REDACTED]</p>

8 (Pages 358 to 361)

364

365

[illegible]

368

[illegible]

■ [REDACTED]  
 ■ [REDACTED]  
 ■ [REDACTED]  
 ■ [REDACTED]

[REDACTED]  
 [REDACTED]  
 [REDACTED]

■ [REDACTED]  
 ■ [REDACTED]  
 ■ [REDACTED]  
 ■ [REDACTED]

369

■ [REDACTED]  
 ■ [REDACTED]  
 ■ [REDACTED]  
 ■ [REDACTED]  
 ■ [REDACTED]  
 ■ [REDACTED]

7 BY MR. CRAMER:

8           **Q. Do you think it makes business sense for**  
9           **Zuffa to promote someone who is on his last fight of**  
10          **his contract and will not be fighting for Zuffa**  
11          **again, will be fighting for another promotion with**  
12          **the same vehemence as to promote someone who has**  
13          **signed a long-term contract with the UFC?**

14 MR. WILLIAMS: Objection to the form of  
15 the question.

16 THE WITNESS: I have -- your question,  
17 you know, is a hypothetical that assumes --

18 BY MR. CRAMER:

19           **Q. Yes.**

20           A. -- quite a bit of few things, and I --  
21       which are not true and, as far as I know, did not  
22       happen in this case. So I don't -- I don't know how  
23       to answer that.

24 Q. Okay. Let me just ask it as a  
25 hypothetical as someone who has been in this

## MICHAEL P. MERSCH - CONFIDENTIAL

494	496
<p>1 the County of Clark, State of Nevada, this 1st day</p> <p>2 of August, 2017.</p> <p>3</p> <p>4</p> <p>5 JUALITTA STEWART, RPR, CCR No. 807</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 E R R A T A</p> <p>2</p> <p>3</p> <p>4</p> <p>5 I wish to make the following changes,</p> <p>6 for the following reasons:</p> <p>7</p> <p>8 PAGE LINE</p> <p>9 ____ CHANGE: _____</p> <p>10 REASON: _____</p> <p>11 ____ CHANGE: _____</p> <p>12 REASON: _____</p> <p>13 ____ CHANGE: _____</p> <p>14 REASON: _____</p> <p>15 ____ CHANGE: _____</p> <p>16 REASON: _____</p> <p>17 ____ CHANGE: _____</p> <p>18 REASON: _____</p> <p>19 ____ CHANGE: _____</p> <p>20 REASON: _____</p> <p>21</p> <p>22</p> <p>23 _____</p> <p>24 WITNESS' SIGNATURE      DATE</p> <p>25</p>
495	
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